Court File No. 38505

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

JOANNE FRASER, ALLISON PILGRIM and COLLEEN FOX

Appellants
(Appellants)

and

THE ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

and

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC

Interveners

FACTUM OF THE RESPONDENT
(Pursuant to Rules 35 and 41 of the *Rules of the Supreme Court of Canada*)

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OVERVIEW

1. The appellants seek the same pension benefits as those earned by full-time members of the Royal Canadian Mounted Police ("RCMP") despite the fact that they worked part-time, through job-sharing, for the periods in question. They seek a benefit to which no other member of the public service is entitled: full-time pension benefits for part-time work. That the appellants used their part-time status to care for their children does not change this basic fact and does not mean that the RCMP Pension Plan is discriminatory. The object and purpose of the RCMP Pension Plan is to provide retirement benefits for its members; it is not to offset the costs associated with childcare.

2. The appellants anchor their claim of discrimination on grounds of sex and family status and suggest that the federal pension scheme is at fault for not allowing them to "buy-back" pension benefits that can only be earned through full-time employment. This approach ignores an important aspect of the scheme as whole, notably that the proportionality between a member's assigned hours of work and their pension benefit ensures equitable treatment between part-time and full-time members.

3. Properly viewed, the complaint raised by the appellants is not with how part-time work is defined in the relevant legislative framework, but with how job-sharing has been enacted in the RCMP. Neither the pension implications of part-time status nor job-sharing policies violate the *Charter*. The appellants' claim unravels because all part-time members, regardless of the reasons for which they chose to work part-time, e.g. childcare, elder care, leisure, furthering of education, are treated the same by the pension scheme without a disproportionately negative impact on the appellants that can be identified by factors relating to enumerated or analogous *Charter* grounds. By contrast, the appellants' approach would not treat all part-time employees the same; only those in the same circumstances as the appellants would be able to take advantage of the enhanced pension "buy-back" they seek.

4. The appellants' approach was rejected by both the Federal Court and the Federal Court of Appeal. Although they took somewhat different jurisprudential paths, they both arrived at the conclusion that there was no violation of s. 15 of the *Charter* primarily because there was no evidence to support the claim of differential treatment (direct or indirect) of the appellants. There

is no nexus between the provisions at issue and the differential treatment alleged.

5. The appellants have benefited from a range of employment opportunities or statuses available to members throughout the course of their careers, including, full-time status, part-time status and leave without pay. They have received the pension benefits they are entitled to given their full-time and part-time status, or leave without pay. As this Court noted in *Withler*, any pension scheme must draw lines and the concern should be "whether the lines drawn are generally appropriate, having regard to the circumstances of the persons impacted and objects of the scheme". [1] Pension benefits reflect a member's terms of service. Here the line is drawn so that part-time members receive pension benefits that reflect their part-time hours. That line is appropriate in the broad context of a scheme that ensures equitable treatment for the broad range of employee circumstances.

PART I – THE FACTS

A. THE NATURE OF THE APPELLANTS' CLAIM

6. The appellants are current or former regular members (i.e. not civilian employees) of the RCMP who worked part-time under the RCMP's job-sharing program while caring for their children. They each signed a Memorandum of Agreement prior to commencing their job-sharing arrangement.[2] They acknowledge that job-sharing enabled them to enjoy personal and professional benefits, such as achieving better work/life balance and being more present in their children's lives while maintaining contact with the RCMP and keeping their policing skills up-to-date.[3]

7. The appellants were paid for the part-time hours they worked while job-sharing and they made pension contributions in respect of these part-time hours.[4] Their complaint has been that they are unable to "buy-back" full-time pension benefits for periods during which they were engaged to

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[1] *Withler v Canada (AG)*, 2011 SCC 12 at para 67.
[2] MOA of Allison Pilgrim, Appellants' Record ("AR") vol V, at 865; MOA of Colleen Fox, AR vol V, at 871; MOA of Joanne Fraser, AR vol V, at 876.
[3] Fraser Affidavit at paras 23-24, AR vol II, at 134; Fox Affidavit at paras 16, 19, 22-23, AR vol III, at 331-333; Pilgrim Affidavit at paras 24-25, AR vol II, at 166.
[4] Cross-examinations of Allison Pilgrim, AR vol VI at 1031 (lines 15-18), 1068 (lines 19-25); Joanne Fraser, AR vol VI, at 918 (lines 10-18).

work part-time hours.[5] The appellants' part-time hours while job-sharing are already fully pensionable. There is no remaining pensionable time to be "bought-back." The number of hours for which a member is engaged to work determines whether the member has full-time or part-time status for pension calculation purposes under the *Royal Canadian Mounted Police Superannuation Act*[6] ("*RCMPSA*" or the "*Act*") and its *Regulations*[7] (collectively, the "RCMP Pension Plan" or "Plan").[8]

8. Specifically, the appellants seek a broad declaration that the *Act* and the *Regulations* violate s. 15(1) of the *Charter* by discriminating on the grounds of sex and "family care responsibilities" or "family status".[9] The respondent does not agree that "family status", unqualified, is an analogous ground protected under s.15 of the *Charter*. However, for the purposes of argument in the present appeal only, and for the reasons discussed below, the respondent is prepared to accept the limited ground of parental status as an analogous ground.

9. In addition, the appellants ask this Court to amend the *Act* and *Regulations* by reading in unspecified words that would allow the appellants who worked part-time for family reasons, the "right" to contribute to the RCMP Pension Plan, "buy-back" pensionable years of service and accrue pension benefits on an "equitable" basis as compared to those in the RCMP who take leave without pay ("LWOP").[10]

10. However, neither the RCMP Pension Plan nor the Public Service Pension Plan[11] allow an individual to buy-back more pension benefits than those flowing from the hours for which they are engaged to work, whether they are full-time, part-time or, if on LWOP the hours they are deemed

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[5] Cross-examinations of Colleen Fox, AR vol VI, at 896 (lines 18-22); Allison Pilgrim, AR vol VI, at 1060 (lines 15-19), 1061 (lines 8-11).
[6] *Royal Canadian Mounted Police Superannuation Act*, RSC 1985, c R-11.
[7] *Royal Canadian Mounted Police Superannuation Regulations*, CRC, c 1393.
[8] *Regulations*, s. 2.1 (definitions of "full-time member" and "part-time member").
[9] Appellants' factum at paras 6, 103 (b).
[10] Appellants' factum at para 103 (c) and (d).
[11] See the *Public Service Superannuation Act*, RSC 1985, c P-36 and the *Public Service Superannuation Regulations*, CRC, c 1358 [*PSSR*].

to have worked.[12]

B. THE NATURE OF PENSION BENEFITS IN THE FEDERAL PUBLIC SECTOR

11. The Government of Canada provides retirement income and benefits to its employees through eleven statutory pension plans, including the *RCMPSA* and the *Public Service Superannuation Act* (*PSSA*).[13] Most of these plans are registered pension plans under the *Income Tax Act* and *Income Tax Regulations*, but are not subject to all of its provisions.[14] Under all of the federal statutory pension plans, including the *RCMPSA*, male and female contributors have equal rights and obligations.[15]

12. The RCMP Pension Plan establishes the pension regime for all members of the RCMP. As of May 2014, there were 22,307 contributors to the Plan.[16] Contributions to the Plan are mandatory and are determined based on a contributor's employment status which, for the purposes of this appeal, means part-time, full-time, or LWOP.[17]

13. The relevant portions of the legislation at issue are too lengthy to be effectively reproduced in full here. The Court of Appeal set out some of the relevant provisions at paragraphs 6-13 of its decision. The full text is found in the links in Part VI of this factum. In summary, the relevant provisions set the conditions pursuant to which members must contribute to the Plan (s. 5 of the *RCMPSA*), the pension implications of part-time service (ss.5.2-to 5.93 and 17.1 to 17.6 of the *Regulations*) and the mechanics and pension implications of LWOP (ss. 6(b)(ii)(K), 6.1 and 27 of the *RCMPSA* and ss. 10 and 10.1 of the *Regulations*).

14. The determination of pensionable service, contributions and benefits applies equally to all

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[12] Gowing Affidavit at paras 4(I), 48 AR vol V, at 742.
[13] Gowing Affidavit at paras 5-6, AR vol V, at 742-43; *Public Service Superannuation Act*, RSC 1985, c P-36.
[14] Decision of the Federal Court ("Decision") at paras 35-36; *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended; *Income Tax Regulations*, CRC, c 945; Gowing Affidavit at para 9, AR vol V, at 743; Rossignol Affidavit at para 8, AR vol V, at 802.
[15] Decision at para 90; See for example *RCMPSA*, s 2; *PSSA*, s 2.
[16] Decision at para 118; Rossignol Affidavit at para 4, AR vol V, at 801; see also the statistics attached as Exhibit A to the Rossignol Affidavit, AR vol V, at 817.
[17] *RCMPSA*, s 5(1); Rossignol Affidavit at paras 10-12 AR vol V, at 802.

members, regardless of sex or family/parental status.[18] Regardless of whether they work part-time or full-time, all contributors in the federal public sector, including members of the RCMP, make pension contributions and accrue years of pensionable service at the same rates, and all earn pension benefits commensurate to the hours for which they are engaged to work.[19]

15. Being "engaged to work" is a key concept. A member or employee can only make pension contributions and accrue benefits commensurate with the hours they are normally assigned to work in accordance with their status as either full-time or part-time. For example, overtime hours worked, for either status, would not be used to calculate pension benefits since that is beyond the hours for which they are engaged to work.[20] Here, the appellants were engaged to work 20 hours per week while job-sharing and they all made pension contributions in respect of those 20 hours.[21]

16. The Plan does not permit members to accrue pensionable service above and beyond the hours for which they are engaged to work. Part-time members cannot "buy-back" full-time pension benefits because they were not engaged to work full-time hours. Full-time members cannot purchase additional pension benefits which exceed their assigned full-time hours of work.[22] Such excess hours are not considered pensionable service.[23] This is consistent across all eleven federal public sector pension plans.[24]

C. DISTINCTION BETWEEN FULL-TIME AND PART-TIME SERVICE

17. The distinction between part-time and full-time hours of work is the key basis for understanding the Plan that underlies this appeal. The Court of Appeal correctly summarized the

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[18] *RCMPSA*, s 2 ; Rossignol Affidavit at para 34, AR vol V, at 807.
[19] Decision para 8; Rossignol Affidavit at paras 22-25, AR vol V, at 804-805; Gowing Affidavit at paras 28, 29, 33, AR vol V, at 747-748.
[20] Rossignol Affidavit para 26 AR vol V, at 805.
[21] MOA of Allison Pilgrim, AR vol. V, p.869; MOA of Colleen Fox, AR vol V, at 87, 871; MOA of Joanne Fraser, AR vol V, at 876, Cross-examinations of Allison Pilgrim, AR vol VI, at 1031 (lines 11-18); Joanne Fraser, AR vol VI, at 918 (lines 6-18).
[22] Decision at para 176; Rossignol Affidavit at para 26 AR vol V, at 805.
[23] Cross-examinations of Joanne Fraser, AR vol VI, at 919 (lines 3-5); Nancy Noble, AR vol VI, at 980 (lines 10-13); Allison Pilgrim, AR vol. VI, at 1031 (lines 19-23).
[24] Rossignol Affidavit at paras 34, 42, AR vol V, at 807-809.

matter as follows:

> Part-time and full-time years of service are counted in an identical fashion for purposes of accrual of pensionable service under the Plan: RCMPSA, s. 6. A year of part-time service is therefore counted as a year of pensionable service the same way as a year of full-time service would be counted. However, contributions and benefits are based on the hours regularly worked by members and are thus pro-rated for part-time members, based on the part-time hours regularly worked: RCMPSA, s. 10(1); Regulation, ss. 5.4, 17.1-17.3.[25]

…

> Neither the RCMPSA nor the Regulation contains any provision aimed specifically at those who work under a job-sharing arrangement. The appellants and all others RCMP members who job-shared were treated as part-time members for the periods they job-shared as they were considered to have then been engaged to work less than full-time hours and to have not been on a period of leave in excess of three months' duration. The appellants' pensions are therefore less than they would have been had they worked full-time hours throughout their careers or than they would have been had they taken unpaid care and nurturing leave instead of job-sharing and had opted to exercise buy-back rights.[26]

18. For the purposes of the Plan, a "full-time member" of the RCMP is a member who is engaged to work 40 hours perweek.[27] A "part-time member" of the RCMP is a member who is engaged to work a minimum of 12 hours per week and who is not a full-time member.[28] As of May 2014, 99.59% of the RCMP's members were considered full-time.[29]

19. A member's part-time or full-time status for pension calculation purposes is found in s. 2.1 of the *Regulations*. It states:

full-time member means a member of the Force who is engaged to work the normal number of hours of work per week for members of the Force;	*membre à plein temps* Le membre de la Gendarmerie qui est engagé pour effectuer le nombre normal d'heures de travail par semaine des membres de la Gendarmerie.

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[25] Federal Court of Appeal Reasons ("Court of Appeal Reasons") at para 8.
[26] Court of Appeal Reasons at para 13.
[27] Rossignol Affidavit at para 16, AR vol V, at 803; *Regulations*, s 2.1.
[28] Rossignol Affidavit at para 18, AR vol V, at 803; *Regulations*, ss 2.1, 5.2(1).
[29] Decision para 91. This represents 22,215 of the RCMP's 22,307 members. Rossignol Affidavit at para 17, AR vol V, at 803; Exhibit A to the Rossignol Affidavit, AR vol V, at 817.

part-time member means a member of the Force who is engaged to work on average not fewer than the number of hours of work per week set by subsection 5.2(1), but who is not a full-time member.	*membre à temps partiel* Le membre de la Gendarmerie qui est engagé pour effectuer en moyenne un nombre d'heures de travail par semaine non inférieur à celui fixé au paragraphe 5.2(1), mais qui n'est pas membre à plein temps.

Subsection 5.2(1) of the *Regulations* sets the minimum number of hours per week for part-time Plan membership at 12.

20. There were no rules governing pension calculations for part-time members before the Plan was amended to include a definition of "part-time" in 2006. Prior to the amendments, pension calculations for periods of part-time work were governed by administrative policy such as job-sharing. Parliament subsequently validated every calculation of part-time benefits made before the 2006 amendments.[30] However, as the Court of Appeal noted, nothing turns on the date the amendments came into force.[31]

21. One of the more critical aspects of the Plan is that no member or employee of the RCMP can have both part-time and full-time status simultaneously. Neither the Plan nor the RCMP's job-sharing policy contemplate the "presumptive" or "underlying" full-time status sought by the appellants. Similarly, the RCMP job-sharing policy provides that members who job-share are working part-time as they share the duties of one full-time position.[32]

D. KEY PENSION-RELATED CONCEPTS

22. To fully understand the RCMP Pension Plan, it is important to understand three key concepts

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[30] *An Act to amend the Royal Canadian Mounted Police Superannuation Act, to validate certain calculations and to amend other Acts*, SC 2009, c 13, s 12.
[31] Court of Appeal Reasons at para 6.
[32] Decision at paras 47-54; 1997 Bulletin, s 1.a, AR vol V, at 821; Admin Manual II-10-2 (dated 1999-01-29), s F.1, F.1.a (p. 843) MOA and Pay (pp. 846-7) and Benefits Summary (p. 852); Admin Manual II.10 (as amended 2014-09-04), AR vol V, ss 1.1.5 (856) 1.3.3.4 (856).

that ensure the coherence of the federal pension scheme.[33]

a. Pensionable service: one year equals one year of pensionable service

23. The term "pensionable service" refers to the period of service credited to a member at retirement.[34] As found by the Courts below, years of pensionable service accrue at the same rate for part-time and full-time members, and both reach service thresholds (i.e. for the vesting of benefits, or eligibility for a reduced or unreduced pension) at the same time.[35] The appellants appear to acknowledge that all members accrue years of pensionable service at the same rate.[36] However, they then erroneously suggest that part-time members accrue years of service at a different rate when compared to full-time members returning from LWOP.[37]

b. Pension contributions: same contribution rate is applied to all members' pay (or deemed pay during periods of LWOP)

24. A "pension contribution" is the money that a member pays into the RCMP's pension fund. Part-time and full-time members or employees contribute to the fund at the same rate (7.5% of a member's salary) but not the same amount.[38] The contribution rate is applied to the member's regular pay, which reflects the hours for which they are engaged to work. This has the effect of making contributions proportional to the actual (or, as discussed below, deemed) hours of work during that period.[39]

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[33] Court of Appeal Reasons at paras 7-10.
[34] *RCMPSA*, s 6.
[35] Decision at para 38; Court of Appeal Reasons at para 8; Rossignol Affidavit at para 23, AR vol V, at 804; Gowing Affidavit at paras 29, 31, AR vol V, at 748.
[36] Written answers to questions put to the affiants, AR vol VI, at 1084.
[37] Notice of Appeal (Court of Appeal) para 3, AR vol I, at 126.
[38] Rossignol Affidavit at para 24, AR vol V, at 804; Gowing Affidavit at para 28, AR vol V, at 747; 1997 Bulletin, Appendix B, s 10.a, AR vol V, at 827; Admin Manual II-10-2 (dated 1999-01-29), s 10.a, AR vol V. at 850; Admin Manual II.10 (as amended 2014-09-04), s 2.5.1.7, AR vol V. at 862.
[39] Decision at paras 39, 111, 176-77; Court of Appeal Reasons at para 10; Rossignol Affidavit at para 24, AR vol V, at 804; Gowing Affidavit at para 28, AR vol V, at 747.

c. Pension benefit: reflects hours for which member was engaged to work throughout their career

25. A "pension benefit" is the amount a member will ultimately receive from the pension plan upon retirement.[40] If a member has periods of part-time pensionable service, their contributions will have been adjusted accordingly, and this will be reflected in the pension benefit ultimately earned.[41] The proportionality between a member's assigned hours of work and their pension benefit ensures equitable treatment between part-time and full-time members.[42] This proportionality is also consistent with the requirements of the *Income Tax Act* and its *Regulations*.[43]

E. JOB SHARING IS A FORM OF PART-TIME WORK

26. Job sharing entails a move from full-time to part-time employment status. The appellants have accepted that job-sharing is a form of part-time employment.[44] The term "job-sharing" is not defined in the Plan, nor does the Plan include provisions relating to particular work arrangements such as job-sharing.[45] The Plan simply provides that a member is either part-time or full-time, as defined therein, and determines pension contributions and benefits accordingly.

27. The RCMP's job-sharing policy for regular members, introduced in a 1997 Bulletin, defined job-sharing as "two or three members sharing the duties and responsibilities of one full-time

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[40] Decision at paras 40-41, Court of Appeal Reasons at para 10; Rossignol Affidavit at paras 28-29, AR vol V, at 805-806.
[41] Decision at paras 40-42, 176-77; Rossignol Affidavit at paras 28, 31-33, AR vol V, at 806-807; Gowing Affidavit at paras 33-34, AR vol V, at 748-749; *Regulations*, ss 17.1-17.3.
[42] Decision at para 177.
[43] Rossignol Affidavit at para 25, AR vol V, at 805; Gowing Affidavit at paras 33-34, AR vol V, at 748-749; *Income Tax Regulations*, s 8504(4)(a), (b) and (c).
[44] Decision at para 43; Notice of Appeal (Court of Appeal) at 5 (2nd para), 6 (2nd para), AR vol I, at 123-24; Notice of Application at para b), AR vol I, at 115; Appellants' Factum at paras 11, 23; Affidavit of Colleen Fox at para 16, AR vol III; Cross-examinations of: Colleen Fox, AR vol VI, at 895 (lines 18-20), 896 (lines 14-25), 897 (lines 1-2); Joanne Fraser, AR vol. VI, at 918 (lines 13-25), 919 (lines 1-2), 940 (lines 8-10); Nancy Noble, AR vol VI, at 979 (lines 11-22), 980 (lines 17-25), 981 (lines 1-12).
[45] Gowing Affidavit at para 26, AR vol V, at 747.

position".[46] Though the wording has evolved, the substance of the 1997 Bulletin remains the same today.[47] The aim of the job-sharing policy was to enable members to remain operationally connected to the RCMP while having a work schedule that better accommodated their individual circumstances.[48]

28. The 1997 Bulletin included an acknowledgement that some benefits would be affected in the future and that the member had the opportunity to obtain legal and financial advice.[49] The 1997 Bulletin also set out the benefits for job-sharers, including their pension contributions "at the normal rate, i.e. 7.5 percent" of their salary.[50] Finally, the 1997 Bulletin included a Pay and Benefits Summary that set out how job-sharing salary, benefits and pension contributions are calculated. The Summary confirms that the member's pay and pension contributions are adjusted to reflect their part-time hours.[51]

29. Over the years, members have job-shared for a variety of reasons, other than childcare obligations, such as to return to school, pursue another career, care for elderly parents, medical reasons and to achieve better work/life balance unrelated to childcare.[52] Less than 60% of job-sharers cited childcare as the exclusive reason for choosing to work part-time; the remainder do not mention childcare at all, or cite it as one reason among others.[53]

30. Job-sharers are a subset of a larger group of part-time members. As of May 2014, none of

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[46] Decision at para 48; 1997 Bulletin, s 1.a.1, AR vol V, at 821.
[47] Decision at para 49; Admin Manual II.10 (dated 1999-01-29), AR vol V, at 841-855; Admin Manual II.10 (as amended 2014-09-04), AR vol V, at 856-863.
[48] Rossignol Affidavit at paras 45-46, AR vol V, at 810; Admin Manual II.10 (dated 1999-01-29), s. G.1, AR vol V, at 843; Admin Manual II.10 (as amended 2014-09-04), ss 1.1.4, 1.1.5, AR vol V, at 856.
[49] Decision at paras 23, 179; 1997 Bulletin, Appendix A, ss 7, 15, 16, AR vol V, at 823-824; Rossignol Affidavit at para 49(c), AR vol V, at 811.
[50] 1997 Bulletin, Appendix B (MOA), s 10.a, AR vol V, p. 827; Rossignol Affidavit at para 49(d), AR vol V, at 811.
[51] 1997 Bulletin, Appendix C, s 5, AR vol V, at 831; Rossignol Affidavit at para 49(e), AR vol V, at 811.
[52] Decision at para 91; Rossignol Affidavit at para 52, AR vol V, at 813; Exhibits A and C to the Rossignol Affidavit, AR vol V, at 819, 838-839.
[53] Decision at para 117; Exhibits A and C to the Rossignol Affidavit, AR vol V, at 819, 838-839.

the 29 regular members who were working part-time were job-sharing. As for civilian members, 14 of the 63 part-time members were job-sharing. This represents 0.06% of the RCMP's 22,307 members.[54] In May 2010, 11 of the 31 regular members working part-time were job-sharing, while 16 out of the 70 civilian members working part-time job-shared. Combined, this represents 0.12% of the RCMP's 23,038 members at the time.[55]

31. The appellants relied on a "snap shot" of the situation in the RCMP as of May 11, 2011 and May 11, 2014.[56] The Court of Appeal commented that this evidence disclosed that there were many reasons reported for job-sharing that were unrelated to the need to care for children. It added that:

> No evidence was provided as to the total percentage of female RCMP members or as to the proportion of them that might have children. Likewise, there was no evidence as to the sex or parental status of those who worked part-time or who took leaves of absence of three months or more. Nor do we have any idea of how many members may have opted to take leaves without pay.[57]

F. RELATIONSHIP BETWEEN LWOP AND PENSION RATES, CONTRIBUTIONS AND BENEFITS

32. LWOP is one of a range of employment arrangements (part-time service is another) available to members. The pension implications of LWOP under the Plan apply equally and without distinction to RCMP members who work full-time or part-time.[58] Unlike full-time or part-time members who are engaged to work a specified number of hours per week, those on LWOP are "absent from the Force" and have no assigned hours of work. They nonetheless maintain continuity

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[54] Decision at para 118; Rossignol Affidavit at para 47, AR vol V, at 810; Exhibit A to the Rossignol Affidavit, AR vol V, at 817.
[55] Decision at para 117; Rossignol Affidavit at para 48, AR vol V, at 810-811; Exhibit C to the Rossignol Affidavit, AR vol V, at 835.
[56] Court of Appeal Reasons at para 18.
[57] Court of Appeal Reasons at para 18.
[58] Gowing Affidavit at paras 37-38, AR vol V, at 750; *RCMPSA* 6(b)(ii)(L) elective service and 26 (c) current service.

of employment.[59]

33. Pension contributions for a period of LWOP are determined by the type of leave and the member's terms and conditions of employment – including their part-time or full-time pay – immediately prior to going on LWOP.[60] For the purposes of calculating pension contributions, a member who is on LWOP is deemed to have received the same pay during their period of leave as they would have received had they not been absent.[61] This is in turn reflected in the pension benefit ultimately earned.[62]

34. A "buy-back" of pensionable service in respect of which contributions were not made is permitted in limited circumstances but it does not correspond to what the appellants are seeking. Upon returning to work after a period of LWOP, members are required to make pension contributions for their first three months of LWOP. This period of mandatory contributions is known as "non-elective service".[63] Beyond the mandatory three months, the member can choose to make contributions for the remaining period during which they were on LWOP. In such cases, the contributions will be based on their deemed salary during the period of LWOP.

35. However, members or employees returning from LWOP can also 'opt out' and choose not to count the remaining period as pensionable service and, therefore, not make the related pension contributions.[64] Those who have opted out still retain the option of contributing for some or all of the remaining period at a later date, as long as they are still employed; this is known as "elective service".[65] In such cases, the member may "buy-back" periods of eligible service by making retroactive pension contributions commensurate to their salary at the date of the election (rather

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[59] *RCMPSA*, s 6.1(1); *Regulations*, s 10(2) and 10(3); *Directive on Leave and Special Working Arrangements* (April 1, 2009), s 4 ("Leave without pay").
[60] Rossignol Affidavit at para 36, AR vol V, at 807.
[61] *Regulations*, s 10.1. A similar provision exists under the *Public Service Superannuation Regulations*: Gowing Affidavit at para 41, AR vol V, at 751.
[62] Rossignol Affidavit at paras 37-38, AR vol V, at 808; Gowing Affidavit at para 44, AR vol V, at 752.
[63] *RCMPSA*, s 6(a)(ii)(A); *Regulations*, s 10(1)(a).
[64] *RCMPSA*, s 6.1.
[65] *RCMPSA*, ss 6(b)(ii)(K), 6.1.

than their deemed salary during LWOP).[66] This reflects the policy that members who took LWOP should not lose the ability to accrue pension benefits.

36. This explains why the appellants were able to "buy-back" pension credits for their time while on maternity leave (a form of LWOP), as they worked full-time prior to going on that leave.[67] Had they worked part-time prior to going on that leave, their "buy-back" opportunity would have been limited to their deemed part-time hours.

37. The same rules apply to anyone on LWOP regardless of the reason for taking LWOP. There is simply no remaining pensionable time to be "bought back" by the appellants as their hours of work while job-sharing are already fully pensionable.[68] The appellants have not been "penalized", "permanently los[t] full-time credit" or barred from pension benefits as they were never entitled to full-time pensions in respect of part-time hours in the first place.[69] They have accrued the pension benefits they are entitled to, which reflect their full-time and part-time status throughout their careers.

G. INCOME TAX PROVISIONS FOR PERIODS OF REDUCED PAY ARE NOT APPLICABLE TO RCMP PENSION PLAN

38. A member of a registered pension plan may, for a number of operational or personal reasons, temporarily work fewer hours than their regular (full-time or part-time) hours or receive a reduced rate of pay. Under the *Income Tax Act* and the *Income Tax Regulations*, a registered pension plan may, when certain conditions (none of which are material to this appeal) are met, allow the plan member to make additional pension contributions so that they are deemed to have worked their

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[66] Rossignol Affidavit at para 35, AR vol V, at 807; Gowing Affidavit at paras 37, 42 AR vol V. at 750-75; *RCMPSA* s. 6(b); *Regulations*, s 10(1)(b).
[67] Decision at para 180; Cross-examinations of: Colleen Fox, AR vol VI, at 906 (lines 1-13); Allison Pilgrim, AR vol VI, at 1046 (lines 10-18), 1047 (lines 6-8); Joanne Fraser, AR vol VI, at 919 (lines 22-25), 920 (lines 13-15), 950 (lines 17-18); Nancy Noble, AR vol VI, at 979 (lines 24-25), 980 (line 1), 991 (lines 4-13), 994, 1012 (lines 14-18), 1019 (lines 20-22).
[68] Decision at paras 39, 132, 185; Cross-examinations of: Allison Pilgrim, AR vol VI, at 1031 (lines 15-18), 1068 (lines 23-25); Joanne Fraser, AR vol VI, at 918 (lines 6-24).
[69] Appellants' Factum at paras 35, 55, 83, 94.

regular (full-time or part-time) hours. This entitles the plan member to the pension benefit associated with their regular hours or regular pay for the period in question.[70] This regime does not permit a part-time employee to make pension contributions in respect of full-time hours.

39. These provisions in the *Income Tax Act* and *Regulations* are permissive and set limits on their use by pension plans that have chosen to include them. None of this is relevant as neither the RCMP Pension Plan nor any federal public sector pension plan provides for the optional pension "top up" of contributions described above.[71] Treasury Board approval and, eventually, a legislative amendment would be required before such provisions could be integrated into the Plan. To date, no such changes have been made.[72]

H. DECISIONS OF THE COURTS BELOW

a) Decision of the Federal Court

40. The Court recognized the barriers faced by women in the workplace,[73] but found that the appellants had presented little evidence to support their claim of discrimination under the Plan[74] and noted that the appellants appeared to misunderstand how the Plan works.[75] The Court concluded that the pension implications of job-sharing had to be considered in conjunction with the many benefits enjoyed by the appellants while job-sharing.[76]

41. The Court applied a two-part test for discrimination under s. 15 of the *Charter* and found that all part-time members of the RCMP are treated the same, regardless of sex or parental/family

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[70] Decision at para 56; *Income Tax Regulations*, s 8500(1) (definition of "eligible period of reduced pay"), 8503(4)(a)(ii); Rossignol Affidavit at para 40, AR vol V, at 808-809; Gowing Affidavit at paras 53-54, AR vol V, at 754.
[71] Decision at para 56; Rossignol Affidavit at paras 41-42, AR vol V, at 809; Gowing Affidavit at para 55 AR vol. V, at 754-755.
[72] Rossignol Affidavit at paras 43-44, 57, AR vol V, at 809-810 and 814-815; Gowing Affidavit at para 56, AR vol V, at 755.
[73] Decision at paras 13, 115-16, 168-69, 186.
[74] Decision at paras 125-30, 170-72, 181.
[75] Decision at para 37.
[76] Decision at paras 9, 22, 128, 131-33, 185.

status.[77] There was simply no nexus between the impugned provisions and the differential treatment alleged by the appellants: any impact on their pension benefits resulted not from the impugned provisions, but from their decision to work part-time.[78]

42. The Court rejected the notion that the pension implications of job-sharing perpetuated a disadvantage or stereotype, finding that the appellants' position was devoid of an evidentiary basis.[79] It found that the appellants' argument that the Plan denied them the ability to choose how to balance their career and family obligations was undermined by their own evidence about their experience while job-sharing and on LWOP.[80]

43. The Court acknowledged the complexity of social benefits legislation such as the Plan and understood that perfection is not the standard when assessing whether benefits proffered under such a plan meet all the needs or preferences of its beneficiaries.[81] The Court further recognized the overall ameliorative effect of the Plan and held that it met its overarching goal of providing retirement income.[82]

b) Decision of the Federal Court of Appeal

44. The Federal Court of Appeal upheld the decision of the Federal Court, pointing to the lack of evidence in the record to support the appellants' claim of discrimination.[83] The Court of Appeal determined that this case turned on the first step of the s. 15 analysis, namely whether the impugned provisions create a distinction on an enumerated or analogous ground.[84] It also found that the appellants had failed to demonstrate that the impugned provisions had a negative and

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[77] Decision at paras 8, 11.
[78] Decision at paras 8, 11, 103-06, 134-39, 187.
[79] Decision at paras 175-77, 181-84.
[80] Decision at paras 179-80.
[81] Decision at paras 160-66, 173-74, 186.
[82] Decision at para 177.
[83] Court of Appeal Reasons at paras 15-17, 46-47, 50-52, 54-55, 57.
[84] Court of Appeal Reasons at paras 39-40.

disproportionate impact on them.[85] It held that even if the appellants had demonstrated such impact, they failed to establish the requisite nexus with an enumerated or analogous ground: the appellants' pension benefits resulted not from their sex or family status, but from their decision to job-share.[86]

45. It also found that the determination that the appellants worked part-time as opposed to "presumptively full-time" while job-sharing was largely factual and that there was "ample basis" for the Federal Court's conclusion to that effect.[87] Following a review of the record, the Court of Appeal held that:

- there was no compelling evidence regarding the financial impacts of job-sharing as opposed to going on LWOP; [88]
- there was little evidence about the number of RCMP members who chose to job-share/work part-time, and no evidence about those who chose LWOP; [89]
- the impugned provisions could not be viewed in isolation, but should instead be assessed in the light of the entire remuneration package offered to members who choose to job-share as compared to members who choose LWOP; [90]
- an informal survey of job-sharers conducted by one of the appellants failed to address the key question of *why* the participants job-shared.[91] This is critical to the allegation of discrimination on the intertwined grounds of sex and family/parental status;

[85] Court of Appeal Reasons at paras 47-50.
[86] Court of Appeal Reasons at paras 51-54.
[87] Court of Appeal Reasons at paras 32-36.
[88] Court of Appeal Reasons at paras 15-16.
[89] Court of Appeal Reasons at paras 17-18.
[90] Court of Appeal Reasons at paras 49-50.
[91] Court of Appeal Reasons at para 17; Noble Affidavit at para 25, AR vol V, at 350.

- even if there was differential treatment, the evidence – including the appellants' expert report on the issue of women in policing – failed to establish the requisite nexus between the differential treatment alleged and an enumerated or analogous ground; [92]
- there was no evidence to suggest that LWOP was unavailable to the appellants and similarly-situated individuals; [93]
- there was no evidence to suggest that more men (or members without children) had opted to take LWOP, as compared to women (or members with children); [94]
- the fact that more women than men job-share does not suffice to establish a distinction based on an enumerated or analogous ground. The evidence must demonstrate that the alleged discriminatory distinction results from the impugned provisions; the analysis must be qualitative, not numerical. [95]

[92] Court of Appeal Reasons at paras 19, 51-53; see also *Grenon v Canada*, 2016 FCA 4 at paras 39, 41.
[93] Court of Appeal Reasons at para 52.
[94] Court of Appeal Reasons at para 52.
[95] Court of Appeal Reasons at para 53, relying on *Grenon* para 41; see also *Miceli-Riggins v Canada (Attorney General)*, 2013 FCA 158 at para 81.

PART II – ISSUES

46. Three issues are raised in this appeal:

i) Whether the impugned provisions result in a distinction on enumerated or analogous grounds recognized by s. 15 of the *Charter* on the basis of sex and/or parental/family status by denying the appellants the right to purchase full-time pension benefits for periods of part-time service; and

ii) If the answer to (i) is affirmative, whether the distinction is discriminatory; and

iii) If the answers to (i) and (ii) are both affirmative, whether the impugned provisions are saved by s. 1 of the *Charter*.

47. These three issues mirror the third and fourth issues raised by the appellants. In respect of the first issue raised by the appellants, the applicable employment status of RCMP members is as set out in the legislation, which defines whether they are full-time or part-time members for pension calculation purposes. In respect of the third question raised by the appellants, there is no separate "test" to determine the "benefit of the law" in a s. 15 analysis. Instead, this is a component in the determination of whether a violation has been established.

PART III – SUBMISSIONS

A. PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

48. The majority of this Court in *R. v. Stillman* reiterated the basic principles of *Charter* interpretation. Chief amongst these is the view that the *Charter* right must be understood in light of the interests it was meant to protect. While *Charter* rights are to be interpreted in a generous manner, it is important not to "overshoot" the actual purpose of the right or freedom in question.[96]

49. These basic principles apply to this case. The appellants have overshot the purpose of s. 15 by claiming discrimination based on sex and family status because they cannot "buy-back" pension entitlements that they have not earned through full-time employment. All part-time employees are treated the same under the Plan regardless of age or any other enumerated or analogous ground. The appellants do not identify an under-inclusive benefit, but rather seek to access a specific additional benefit. The Plan simply reflects the status set under the job-sharing program. Stated otherwise, the Plan does not itself determine a member's employment status, but rather reflects the reality of the hours of work. If the job-sharing policy had conferred full-time status on the appellants, they would then have accrued pensionable service on full-time basis.

B. EMPLOYMENT STATUS OF THE APPELLANTS IS CLEAR

50. The need not to "overshoot" the *Charter* right is tied into the appellants' suggestion that there is confusion or doubt about their employment status. The status of being a part-time employee is not a recognized or analogous ground under s. 15.[97] This view does not constitute a "formalistic approach" as suggested by the appellants.[98] It reflects the reality of the working relationship the appellants voluntarily entered into when they decided to work part-time. In order to circumvent this proposition and invoke s. 15, the appellants introduce concepts such as "underlying" or "presumptive" full-time status as the reason they should be allowed to "buy-back" full-time pension benefits. Not only are these terms not recognized in any federal government pension

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[96] *R. v Stillman*, 2019 SCC 40 at para 21.
[97] *Baier v Alberta*, 2007 SCC 31 at paras 63-65; see also Court of Appeal Reasons at para 41.
[98] Appellants' factum at para 40.

scheme, they do not properly describe the employment status of the appellants in this matter.

51. The heart of the appellants' argument is that they were always full-time members who temporarily worked part-time hours.[99] They need to make this argument in order to point to the comparison with full-time members who went on LWOP and were deemed, for the purpose of calculating pension contributions, to have retained their full-time status while on LWOP. That comparison grounds their argument that they suffered discrimination.[100] This demonstrates that the appellants' complaint is really an attack on the job-sharing agreement that identified them as part-time members rather than deeming them full-time for pension purposes.

52. Both the Federal Court of Appeal and the Federal Court rejected this proposition and found that the appellants were part-time members while job-sharing.[101] The courts below did not, as is argued by the appellants, find that a change in employment status necessarily results from a change in work hours.[102] The Federal Court of Appeal specifically examined the definitions of "full-time member" and "part-time member" in s. 2.1 of the *Regulations* and found that the former work 40 hours per week while the latter work between 12 and 40 hours per week. The Courts below also found – and it is undisputed – that the appellants worked between 12 and 40 hours per week while job-sharing, as clearly set out in their job-sharing agreements.[103] The appellants were therefore part-time RCMP members while job-sharing.

53. The definitions of part-time and full-time make clear that a member cannot be engaged to work both 40 hours per week *and* more than 12 but fewer than 40 hours per week. Contrary to what the appellants suggest, the temporary nature of job-sharing arrangements has no bearing on the fact that, for the duration of the arrangement, a member is working part-time. The Plan does not recognize "presumptive" or "underlying" full-time status.[104] Notably, the appellants themselves

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[99] Appellants' factum at para 43.
[100] Appellants' factum at paras 46 and 54.
[101] Court of Appeal Reasons at paras 32-36; Decision at paras 47-58.
[102] Appellants' factum para 40.
[103] Court of Appeal Reasons at paras 9, 34; Decision at paras 47-52.
[104] Decision paras 53-54.

have repeatedly acknowledged that job-sharing is a form of part-time employment.[105]

54. The appellants rely primarily on arbitral jurisprudence, involving significantly different facts, to suggest that there exists an "established principle" that an employee somehow retains their full-time status if they have a legal right to return to full-time hours during periods of part-time employment.[106] As set out above, the primary factual distinction here is that the appellants voluntarily opted to job-share and, having signed job-sharing agreements, did so with the knowledge that there would be pension implications due to the change in their employment status from full-time to part-time. In addition, the Federal Court of Appeal correctly dismissed the appellants' reliance on arbitral jurisprudence, finding not only that the arbitral cases involved the interpretation of specific collective agreements, but also that there were several authorities that reach the opposite conclusion.[107]

55. As for the appellants' view that the regulations were improperly retroactively applied,[108] as explained above, the prior calculations were validated with a specific legislative enactment which reflects the will and sovereignty of Parliament.

C. THE FRAMEWORK FOR THE S. 15 ANALYSIS

56. As summarized by this Court in *Withler v. Canada (AG*), when legislation is challenged under s. 15(1) of the *Charter*, the only issue for the Court is whether the impugned legislation violates the norm of substantive equality protected by the *Charter*.[109] This analysis involves a "flexible and contextual inquiry into whether a distinction has the effect of perpetuating arbitrary disadvantage on the claimant because of his or her membership in an enumerated or analogous group".[110]

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[105] Decision at para 43; Affidavit of Colleen Fox at para 16 AR vol III, at 331.
[106] Appellants' factum at paras 41-43.
[107] Court of Appeal Reasons at para 59.
[108] Appellants factum at para 45.
[109] *Withler* at para 2.
[110] *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 at para 16.

57. This Court in *Kahkewistahaw First Nation v Taypotat*, set out that in determining whether the impugned provisions violate the norm of substantive equality protected under s. 15 of the *Charter*, the Court is to address two questions: Whether the impugned law (1) creates a distinction on the basis of an enumerated or analogous ground and (2) fails to respond to the actual capacities and needs of the group and instead imposes burdens or denies a benefit that has the effect of reinforcing, perpetuating or exacerbating their disadvantage.[111] The Courts below correctly answered these questions in the negative.[112]

58. Recently, in *Quebec (Attorney General) v. Alliance du personnel*, this Court emphasized that the first step should be used to bar claims that are not intended to be covered by the *Charter* and that are not based on an enumerated or analogous ground. The focus of the first step is to eliminate claims that have nothing to do with substantive equality.[113] That is the case in this appeal.

59. In *Alliance du personnel*, this Court cautioned that formal use of a comparator group is not necessarily helpful and what is required is an approach that looks at the "full context" of the matter. As the Court noted, "[a] mirror comparator group analysis 'may fail to capture substantive inequality, may become a search for sameness, [and] may shortcut the second stage of the substantive equality analysis'".[114]

60. The second stage no longer requires a step-by-step consideration of the factors set out in *Law v. Canada (Minister of Employment and Immigration).* The focus of this stage of the inquiry is the discriminatory *impact* of the distinction and not on whether a discriminatory attitude exists or if a distinction perpetuates negative attitudes about a disadvantaged group.[115]

61. Pension schemes are complex social and fiscal programs that call for judicial restraint in the

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[111] *Taypotat* at paras 191 and 20: see also *Withler* at para 30.
[112] Decision at paras 11, 110, 172; Court of Appeal Reasons at paras 37, 47-60.
[113] *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux,* 2018 SCC 17 at para 26.
[114] *Alliance du personnel* at para 27, referencing *Withler* at para 60.
[115] *Alliance du personnel* at para 28.

face of constitutional challenges.[116] Caution should be exercised to ensure that the full set of benefits involved in a legislative scheme are "viewed as a whole and over time" as such context is needed in order to appreciate the "broader context of the scheme as a whole".[117] In this matter, the appellants seek to isolate their claim from the necessary broader perspective.

D. APPLICATION OF THE S. 15 FRAMEWORK TO THE FACTS OF THIS APPEAL DEMONSTRATES NO VIOLATION OF THE *CHARTER*

i) First Step: There is no Distinction Based on Enumerated or Analogous Grounds

a) "Effects" Discrimination Claim Cannot be Supported

62. The appellants describe their appeal as concerning the "right or opportunity to make [the] election to "buy-back" full-time pension service for time not worked" and suggest that this is the "benefit of the law" at issue in this appeal.[118] As the claim is one of indirect discrimination, the appellants must describe the effects of the alleged differential availability of the missed opportunity to "buy-back" pension benefits.

63. The RCMP Pension Plan is neutral when it comes to calculating service accrual, pension contributions and pension benefits. As detailed below, the appellants rest their argument on the flawed comparison between full-time members who go on LWOP and members who work part-time. The relevant question, however, is whether the Plan treats women and/or parents who work part-time differently than other members who work part-time. It does not: all members of the RCMP who are engaged to work part-time are treated the same regardless of whether they are male or female and regardless of whether their reasons for working part-time relate to childcare, elder care, leisure pursuits, furthering their education or other reasons.

64. As the Plan is facially neutral, the appellants need to establish a distinction in its effects. As this Court noted in *Withler*, "establishing the distinction will be more difficult, because what is

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[116] *Miceli-Riggins* at para 64; see also *Gosselin v Québec (Attorney General)*, 2002 SCC 84 at para 55.
[117] *Withler* at paras 81, 67.
[118] Appellants' factum at para 60.

alleged is indirect discrimination".[119] In the end, "the focus will be on the effect of the law and the situation of the claimant group".[120]

65. The appellants point to economic and moral effects in this case. Specifically, it is suggested that the appellants took an "economic hit" because they could not "buy-back" full-time pension credits.[121] The alleged moral effect is the continued stereotype of women being able to either be a caregiver or a member of the labour force, but not both at the same time.[122]

66. The economic effect must be assessed not only in terms of the overall "remuneration package", as was done by the Federal Court of Appeal,[123] but also in terms of the context of the objective of the Plan. As dealt with below, the sole objective of the Plan is to provide retirement benefits for all of its members.

67. As the Court of Appeal held, there was simply no evidence to support the claim when comparing the impacts of job-sharing as opposed to LWOP.[124] For example, if the benefit sought is the opportunity to make retroactive pension contributions (the pension "buy-back") – as opposed to the enhanced benefit itself – then the question of whether the absence of that opportunity adversely impacts the economic interests of the claimant group would depend on how readily its members would take up that opportunity. The courts below did not err in requiring some evidence, beyond anecdotal statements, of the adverse effects of the impugned provisions.

68. As Justice Iacobucci noted in *Symes v. Canada*, "if the adverse effects analysis is to be coherent, it must not assume that a statutory provision has an effect that is not proven. We must take care to distinguish between effects which are wholly caused, or are contributed to, by an impugned provision and those social circumstances which exist independently of such a

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[119] *Withler* at para 64.
[120] *Withler* at para 64.
[121] Appellants' factum at paras 34, 61, 85.
[122] Appellants' factum at paras 6, 35, 91.
[123] Court of Appeal at Reasons at para 50.
[124] Court of Appeal at Reasons at paras 15-16.

provision."[125]

69. The moral effects argument is also problematic. The appellants rely on the dissent of this Court in *Egan v. Canada*[126] that the effect of excluding same sex partners from the definition of "spouse" in the relevant legislation could not be measured.[127] *Egan* is not analogous to this matter. In *Egan*, the legislation denied the possibility of "public recognition and acceptance of homosexuals as a couple", a benefit of "tremendous importance to them and to the society in which they live".[128] The same cannot be said about the legislation at issue here. The point and effect of job-sharing and part-time work is to promote flexible arrangements to allow for more inclusion in the workforce. There is no evidence that the pension implications of such arrangements reflect or perpetuate exclusionary stereotypes.

70. The appellants' claim of adverse effects is based on the comparison with full-time members who go on LWOP, and those members' ability to make retroactive pension contributions ("buy-back") in respect of deemed full-time service while on LWOP. Without that comparison, there is no benefit being denied. But full-time LWOP is not an appropriate comparator. LWOP, which is available to both full-time and part-time employees, must be viewed as just one part of a broad scheme providing a range of options available to all members to take advantage of over the course of their careers.

b) Discrimination Cannot be Found Based on Non-existent Concepts

71. The appellants' argument at paragraph 55 of their factum demonstrates a misunderstanding of the Plan. There they compare someone who worked full-time prior to going on LWOP and subsequently seeks to make retroactive pension contributions, to someone who has worked part-time and did not go on LWOP, but nonetheless seeks to "top-up" their pension entitlements as though they had been engaged to work full-time. This ignores the fundamental principle that what the individual is able to access in terms of pension contributions and benefits is determined by their full- or part-time status. The appellants' argument is based on a concept of "workers who

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[125] *Symes v Canada*, [1993] 4 SCR 695 at 764-765.
[126] *Egan v Canada*, [1995] 2 SCR 513.
[127] Appellants' factum at paras 59-60.
[128] *Egan*, at 594 Cory and Iacobucci JJ. in dissent.

temporarily work reduced hours" and who somehow maintain "presumptive" or "underlying" full-time status. These concepts simply do not exist in the Plan or any federal government pension scheme.

72. By creating and then relying on such concepts, the appellants construct an argument that there is a distinction in how the Plan is administered and applied. They then ask the Court to conclude that this distinction results in discrimination based on sex and/or family status.[129]

73. A finding of discrimination cannot be based on a concept such as "temporarily working reduced hours" that does not exist in the pension Plan. Contrary to the argument put forth, the appellants have not lost any credits for service nor have they suffered any reduction in pension. Rather, as is the case with any other part-time employee in the federal public service, they have been provided with the pension contribution rights and benefits that reflect their periods of part-time service. If the appellants' view is accepted, they will receive the right to make pension contributions that exceed the hours for which they were engaged to work. They will ultimately get full-time pension benefits for periods of part-time work.

74. No public servant is entitled to such pension treatment, regardless of sex or parental status. Any distinction in the pension benefits is based on the neutral factor of working part-time or full-time. This factor exists independently of the impugned provisions and is not a consequence or result of the Plan. Rather, the Plan simply reflects a member's employment status at a given time. Instead of establishing that the Plan creates a discriminatory distinction, the appellants' approach is to suggest that the Plan could or should provide more generous benefits to individuals in the appellants' situation. This is not the purpose of a s. 15 analysis. The appellants' approach would create a legal fiction that reflects neither the reality of their employment status nor Parliament's intent in devising the benefits available under the Plan.

75. Finally, as pointed out by the Federal Court of Appeal, the *Orillia Soldiers* decision is of no assistance to the appellants. In that case, the Ontario Court of Appeal held that it is not discriminatory to provide differential compensation (including benefits) based on whether an

[129] Appellants' factum at paras 55-56.

employee was actively at work. Making a distinction based on hours worked, as done in this matter, is not discriminatory.[130]

c) No Distinction Based on Sex

76. The claimed discrimination on the basis of sex is grounded on the inaccurate assertion that there is an adverse effect on women on the basis of sex because those who work part-time cannot enjoy the same pension benefits as those colleagues (including the overwhelming majority of women in the RCMP) who work full-time.[131]

77. The appellants receive part-time pension benefits in respect of certain periods not because they are women or parents, but because they worked part-time during those periods. The "trigger" as to whether the appellants worked part-time or full-time is entirely unconnected to the Plan.[132] Simply because the majority of members who took advantage of part-time work opportunities were women who used this status for childcare duties does not mean that they have been discriminated against because they, as part-time members, do not receive full-time pension benefits.

78. In fact, the overwhelming majority of women in the RCMP worked full-time. Though women represent 26.5% of all RCMP members, less than 0.5% of all members are in the part-time group. This means that the vast majority of women, mothers and parents are in the full-time group.[133] The evidence compiled by the RCMP indicated that less than 60% of job-sharers cited childcare as the exclusive reason for choosing to work part-time; the remainder do not mention childcare at all, or cite it as one reason among others.[134] The appellants rely on an informal survey conducted by an RCMP member which shows that most of those who job-shared were women with children.[135] Though the appellants assume that these members all job-shared for childcare purposes, there is no reliable evidence to that effect: the survey participants were never asked the key question of *why*

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[130] Court of Appeal Reasons at para 58; *Ontario Nurses Association v Orillia Soldiers Memorial Hospital*, 1999 Canlii 3687 (ON CA), 42 OR (3d) 692, at 703, 705(e).
[131] Appellants' factum at para 64.
[132] Decision at paras 137-38 (quote); see by analogy *Grenon v Canada*, 2016 FCA 4 at para 40.
[133] Decision at para 153; Rossignol Affidavit at paras 17, 19, AR vol V, at 803-804.
[134] See the statistics attached as Exhibits A and C to the Rossignol Affidavit, AR vol V, at 819, 838-39.
[135] Appellants' factum at para 62; Noble Affidavit at para 25, AR vol III, at 503-06.

they job-shared.[136] This is critical to the appellants' allegations of discrimination on the intertwined grounds of sex and family/parental status.

d) No Distinction Based on "Family Status"

79. For similar reasons, there is also no distinction, or discrimination, based on family status. Specifically, any impact on pension benefits (the alleged "economic hit")[137] flows from the status of the appellants as part-time workers and not from their childcare responsibilities or other reasons for moving to part-time status.

80. As the appellants acknowledge, this Court has yet to recognize family status as an analogous ground.[138] An analogous ground is one "based on "a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity."[139] The general notion of "family status" should not be viewed as an analogous ground protected under s. 15 of the *Charter* because it is a complex concept and it cannot be said that all of its iterations meet the test set by this Court.

81. For example, courts have found that certain circumstances which are conceptually related to family status attract analogous-ground protection. These include parental status,[140] marital status,[141] being an adopted child,[142] and being the parents of twins.[143] On the other hand, courts have found that the following circumstances related to family status do not attract analogous ground protection: a child's residence with one parent or the other,[144] a single parent's family income,[145]

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[136] Court of Appeal Reasons at para 17; Cross-examination of Nancy Noble, AR vol VI, at 1007 (lines 15-25), 1008 (lines 1-2).
[137] Appellants' factum at para 69.
[138] Appellants' factum at para 67.
[139] *Withler* at para 33.
[140] *Perigny v Canada (Attorney General)*, 2003 FCA 94 at para 44; *Canada (Attorney General) v Lesiuk*, 2003 FCA 3 at paras 37-38.
[141] *Miron v Trudel*, [1995] 2 SCR 418.
[142] *Grismer v Squamish First Nation*, 2006 FC 1088 at para 46; *Worthington v Canada*, 2008 FC 409 at para 87.
[143] Employment insurance claim by C. Martin (3 May 2011), CUB 76899; See *Martin v Canada (Attorney General)*, 2013 FCA 15 at para 21.
[144] *Fannon v The Queen*, 2011 TCC 503 at para 15, aff'd 2013 FCA 99.
[145] *Pilette v Canada*, 2009 FCA 367 at para 43.

a characteristic which affected the child but not the parent,[146] the fact of not being a lineal ascendant or descendent of a deceased person,[147] and the fact of being either a stepchild or a non-adopted child.[148] Moreover, to the extent that human rights codes impose a duty to accommodate childcare under the ground of family status, that duty arises only if certain factual conditions are satisfied in individual cases.[149]

82. The record before the Court does not lend itself to support a determination of this complex question. The question of whether family status is an analogous ground, and how that should be defined, is best left for another appeal with a different and more complete record on that question.[150]

83. Even if this Court accepts the broader analogous ground of family status proposed by the appellants, their claim fails. The RCMP Pension Plan treats all members of the Plan equally, regardless of sex or family status. All members receive pension benefits that are commensurate to the hours for which they were engaged to work, be they part-time or full-time. No member can "buy-back" pension benefits above and beyond those flowing from these hours. The argument that the effect of the Plan is to discriminate on the basis of family status is not supported by the record.

84. Therefore, contrary to the appellants' view, if such an analogous ground were recognized, any protected characteristic of parental status would be limited to being a parent and, as acknowledged by the appellants, would not extend to individual accommodation under the Plan.[151] Benefit programs are not generally expected to provide that level of detail.[152]

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[146] *Wynberg v Ontario*, [2006] OJ No 2732 (QL) (ONCA) at paras 205-06; *Stewart v Freeland* (2006), 276 DLR (4th) 585 (ONCA) at paras 15-16.
[147] *Hoffman v The Queen*, 2000 CanLII 126 (TCC) at para 25.
[148] *McCrea v Barrett et al*, 2004 BCSC 208 at para 93.
[149] *Canada (Attorney General) v Johnstone*, 2014 FCA 110; *Health Sciences Assoc. of B.C. v Campbell River and North Island Transition Society*, 2004 BCCA 260.
[150] *MacKay v Manitoba*, [1989] 2 SCR 357, at 361-362.
[151] Appellants' factum at para 76.
[152] *Withler* at para 67; *Nishri v. Canada*, 2001 FCA 115 at para 43.

e) Contextual Comparison Demonstrates no Distinctions Made in Plan

85. This Court has moved from the explicit need for a comparator group to a more contextual comparative analysis. Nevertheless, much of the appellants' argument is focused on their inability to "buy-back" full-time pension benefits in the same manner as full-time members who go on LWOP. The approach advocated by the appellants demonstrates why this Court has moved from direct comparator groups in the s. 15 analysis as such an approach narrows the focus of the argument on an improper comparator at the expense of the broader context of the Plan.

86. That broader context demonstrates that there are a variety of employment statuses available for members throughout their careers, each with varying benefits and characteristics. To focus simply on one comparison (part-time versus LWOP) at one specific point in their careers does not assist the Court in determining whether the Plan draws a discriminatory distinction. In order to make their case, the appellants try to compare these rights and benefits, which are based on the Plan, with an employment status that they have created and that is not based on the Plan or any other federal pension scheme, i.e. "presumptive" or "underlying" full-time status. The result, according to the appellants, is that women are again forced to choose between two distinct and separate roles as a caregiver or "member of the labour force".[153]

87. The appellants' approach demonstrates the difficulties inherent in such a narrow comparison. The comparison conflates pension benefits for two qualitatively different types of employment and is thus of little assistance: the appellants are comparing apples (full-time LWOP situations) to oranges (part-time employment).

88. The appellants' argument also ignores the fact that if a part-time member goes on LWOP, their "buy-back" rights will be determined by their pre-LWOP part-time hours, just as full-time members' buy-back rights are determined by their pre-LWOP full-time hours.[154] In other words, part-time and full-time members have equal buy-back rights that are directly tied to their assigned hours of work and employment status.

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[153] Appellants' factum at para 91.
[154] See paras 32-37 above.

89. The situation of the appellants further undermines their suggestion that the Plan is discriminatory. Since the appellants all worked full-time prior to going on maternity leave,[155] they were deemed, for pension purposes, to have received their full-time salary (associated with full-time assigned hours of work) and were thus entitled to buy-back full-time pension benefits for their maternity leave, as that leave is a form of LWOP. Had they been working part-time prior to going on maternity leave, they would have been deemed to have received their part-time salary during this period and would only have been entitled to buy-back part-time pension benefits. The controlling factor is their actual (or deemed) hours of work. This is unrelated to their sex or parental status.

90. What the narrow comparator group approach also misses is the broader societal needs fulfilled by the Plan specifically and pension schemes generally. When looked at from this broader flexible contextual inquiry lens, it becomes apparent that the Plan and supporting legislation do not perpetuate arbitrary disadvantage on the appellants, but rather provide an equal and non-discriminatory approach to the accrual of pension benefits regardless of whether the appellants are part of any enumerated or analogous group.

91. The appellants also fail to deal with the substantive differences between LWOP and part-time employment. For instance, in the context of LWOP, time not worked is time during which an employee is authorized to be absent from work despite normally being scheduled to work. In the context of part-time employment, on the other hand, time not worked is time during which the employee is not scheduled to work in the first place. Part-time employees thus are not considered to be 'absent from work' (i.e. on LWOP) for these periods.

92. Further, members on LWOP, though still employed by the RCMP, do not work for and are not paid by the RCMP during that period. For pension purposes, however, they are deemed to

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[155] Cross-examinations of: Colleen Fox, AR vol VI, at 906 (lines 1-13); Allison Pilgrim, AR vol VI, at 1046 (lines 10-18), 1047 (lines 6-8); Joanne Fraser, AR vol VI, at 919 (lines 22-25), 920 (lines 13-15), 950 (lines 17-18); Nancy Noble, AR vol VI, at 979 (lines 24-25), 980 (line 1), 991 (lines 4-13), 994, 1012 (lines 14-18), 1019 (lines 20-22).

receive the salary they would have received had they not been on LWOP.[156] Members may go on LWOP for a number of reasons authorized by the Treasury Board, and the *Regulations* set out the contributions required for various types of LWOP.[157] Part-time members, on the other hand, work and receive pay and benefits from the RCMP in respect of their part-time hours.

93. What this demonstrates is that any distinction made between part-time employees and those on LWOP is based on the very different nature of those positions and related benefits within the employment structure of the RCMP. The appellants have gone back and forth between these statuses at various points in their careers. Any distinction is not based on an enumerated or analogous ground.

ii) Second Step: If a Distinction is Found it is not Discriminatory

94. The fact that women have historically been disadvantaged in the workplace is not in dispute. But this general historical fact does not mean the Plan and supporting legislation perpetuate that disadvantage.

95. The Plan, like all pension plans, is restrictive in some manner in relation to benefits received. However, as this Court has noted "[d]ifferential treatment of different groups is not, in and of itself, a violation of s. 15(1)".[158] Something more is needed to find a violation of s. 15 because the *Charter* "does not prohibit distinctions that have an adverse impact unless they are discriminatory."[159] The appellants are not denied a benefit in a way that reinforces, perpetuates or exacerbates a disadvantage.[160] As affirmed by this Court, a mere intuition that the provisions may have some disparate impact is insufficient; there must be enough evidence to show a *prima facie* breach of s.

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[156] See explanation at paras 33-34 above.
[157] *Regulations*, s 10.
[158] *Quebec (Attorney General) v A*, 2013 SCC 5 at para 172; see also *Taypotat* at para 18; *Miceli-Riggins* at para 44.
[159] *Quebec (Attorney General) v A*, 2013 SCC 5 at para 171; See also *Withler* at para 31, cited in *Miceli-Riggins* at para 44.
[160] *Taypotat* at para 20.

15 of the *Charter*.[161]

96. That the appellants moved between full-time, part-time and LWOP status throughout their careers is a further indicator that their experience resulted not from their membership in a protected group, but from their personal circumstances and employment status at given points in time.[162] Their employment status at these various times was not a consequence of the impugned provisions.

97. The inability of the appellants to provide a sufficient evidentiary basis to support their claim was highlighted by the Federal Court of Appeal. As it noted, the deficiencies in the evidence concerned crucial aspects of the claims, such as the financial impacts of job-sharing as opposed to going on LWOP;[163] the number of RCMP members who chose to job-share/work part-time, and no evidence about those who chose LWOP;[164] the lack of evidence that LWOP was unavailable to the applicants and similarly-situated individuals; [165] and the lack of evidence that more men (or members without children) had opted to take LWOP, as compared to women (or members with children).[166] The Court of Appeal did not, as the appellants suggest, adopt an overly narrow approach by focusing exclusively on the lack of evidence pertaining to the financial implications of working part-time.

98. The appellants also fail to take into account the full context of the Plan as a complex social benefits scheme, and the choices made by governments in implementing such plans. In *Withler*, this Court identified the difficult policy choices inherent in complex social policy planning:

> Where, as here, the impugned distinction is the denial of a benefit that is part of a statutory benefit scheme that applies to a large number of people, the discrimination assessment must focus on the object of the measure alleged to be discriminatory in the context of the broader legislative scheme, taking into account the universe of potential beneficiaries. The question is whether, having regard to all relevant factors, the impugned measure perpetuates disadvantage or stereotypes the

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[161] *Taypotat* at para 34.
[162] See by analogy *Miceli-Riggins* at paras 77-83.
[163] Court of Appeal Reasons at paras 15-16.
[164] Court of Appeal Reasons at paras 17-18.
[165] Court of Appeal Reasons at para 52.
[166] Court of Appeal Reasons at para 52.

claimant group, contrary to s. 15(1) of the *Charter*.[167]

99. In assessing the Plan and supporting legislation, courts must have regard to the broader ameliorative effect of the legislation as well as the many interests it attempts to balance.[168] Such programs aim to benefit certain groups and necessarily draw lines. As set out in *Withler*, "[p]erfect correspondence between a benefit program and the actual needs and circumstances of the claimant group is not required"; rather, a court's concern should be "whether the lines drawn are generally appropriate, having regard to the circumstances of the persons impacted and the objects of the scheme".[169] It is for Parliament to define benefits, terms of entitlements and contributions for such benefits plans.[170]

100. The purpose and object of the federal pension schemes, including the RCMP Pension Plan, is to provide retirement income and benefits to plan members.[171] It is not to offset the costs associated with childcare, to provide "universal welfare benefits", or to meet all of the needs of its beneficiaries.[172] When looked at from the lens of its objective, the Plan does not discriminate against any particular group.

101. Rather than discriminate against women who have childcare responsibilities, the Plan contains provisions that specifically aim to support women and members with childcare obligations. For example, if a member is on LWOP due to a pregnancy, the birth of a child, an adoption or to care for a child within 52 weeks of birth or adoption, the normal pension contribution rate applies. This is in contrast with s. 10(1)(b) of the *Regulations*, which provides that in general the buy-back rate is two or two and one-half times the *RCMPSA* +rate, depending on the timing of the period of

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[167] *Withler* at para 3.
[168] *Withler* at para 38.
[169] *Withler* at para 67.
[170] *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 at para 9, cited in *Miceli-Riggins* at para 74.
[171] Gowing Affidavit at paras 5, 17, AR vol V, at 742 and 745.
[172] *Miceli-Riggins* at paras 69, 73: see also Gowing Affidavit at para 4-I, AR vol V, at 172.

LWOP.[173]

102. As a further example, one of the rationales for adopting elective buy-back provisions and allowing members to make such contributions over time – as opposed to immediately upon returning from LWOP – was to address the particular circumstances of female members of the RCMP:

> I might mention too that this provision, like that for coverage of part-time employees, would particularly benefit women who continue to be the employees with the greatest need for room to balance family and career commitments. Many women, for example, take advantage of extended periods of leave without pay for the purpose of caring for your children or for elders, and this provision would enhance their ability to return to work without undue financial hardship.[174]

103. Therefore, rather than acting to reinforce stereotypes of women and forcing them to choose between being a caregiver for their children or an active member of the labour force,[175] the Plan was designed to allow them to do both. This is a goal that was further advanced by the implementation of the job-sharing policy for members of the RCMP. That the Plan does not allow the appellants to access full-time pension benefits for periods where they worked part-time does not engage or support stereotypes of women in the labour force. It simply reflects the relationship between full- or part-time status and the ensuing pension benefits that are available to all members of the Plan.

104. The suggestion by the appellants that this pension design is "particularly harmful" to them and women in general is not supported by their own evidence. They presented only anecdotal evidence of members who left the force because they could not job-share.[176] One said she would have

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[173] See also *Regulations*, ss 10(2)(b)(iii), 10(3) and 10(4). A similar regime is provided for in the broader public service pension scheme: see *PSSR*, ss 7(2)(a)(iii) and 7(3).
[174] *House of Commons Debates*, 34, 3rd Sess, Vol VI (24 February 1992) at 7487 (Hon Gilles Loiselle).
[175] Appellants' factum generally at paras 89-91 and specifically para 91.
[176] Noble Affidavit at para 32, AR vol III, at 352; Cross-examination of Nancy Noble, AR vol VI, at 1017 (lines 21-25), 1018.

engaged in job-sharing regardless of the pension implications.[177] The individual appellants have all acknowledged that they benefitted from the job-sharing policy and that it enabled them to better balance their work and family obligations.[178]

E. SECTION 1

a) Pressing and Substantial Objectives

105. The objective of the Plan is to provide retirement income and benefits for its members; it is not to offset the costs associated with childcare or to meet all of the needs of the Plan's beneficiaries.[179] The specific provisions being challenged set the conditions pursuant to which members must contribute to the pension fund,[180] as well as the modalities and pension implications of LWOP.[181]

106. These provisions, and the Plan as a whole, are consistent across the federal public sector. They provide the government with the certainty and predictability necessary to project the long-term costs of the plan and to budget accordingly.[182] Provisions pertaining to full-time, part-time and LWOP are designed to support the policy or business goals of the plan sponsor – here, the RCMP – such as recruitment and retention, but with certain limits to support the integrity of the pension plan.[183]

b) Rational Connection Exists

107. The attainment of this element is "not particularly onerous."[184] It is met so long as the means

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[177] Cross-examinations of Colleen Fox, AR vol VI, at 910 (lines 4-12).
[178] Cross-examinations of: Colleen Fox, AR vol VI, at 908-09; Allison Pilgrim, AR vol VI, at 1069 (lines 1-20); Joanne Fraser, AR vol VI, at 940-41.
[179] Gowing Affidavit at paras 5, 17, AR vol. V, at 742 and 745; *Miceli-Riggins* at paras 69, 73
[180] *RCMPSA*, s 5.
[181] *RCMPSA*, ss 6, 6.1 and 27; *Regulations*, ss 10 and 10.1.
[182] Gowing Affidavit at para 17, AR vol. V, at 745.
[183] Gowing Affidavit at para 39, AR vol V, at 750.
[184] *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 at para 228.

chosen are linked to, or may help bring about, the objective.[185] Here, the impugned provisions are rationally connected to the Plan's underlying objectives. By setting out the modalities for pension contributions and elective service (or "buy-back") following periods of LWOP, they provide retirement income for the Plan's members while at the same time maintaining a degree of certainty so as to ensure the Plan's integrity.[186] In that regard, the impugned provisions reflect the notion, consistent across the public service, that pension benefits are tied to assigned hours of work, be they part-time or full-time.

c) Impairment is Minimal

108. The minimal impairment analysis considers whether there are other less drastic means of achieving the government's actual objective in a "real and substantial manner", not some less effective objective. The courts accord a measure of deference, particularly on complex social issues where the courts are not necessarily in the best position to choose among a range of reasonable alternatives.[187]

109. To the extent that the impugned provisions impair the appellants' rights, they do so as little as reasonably possible in order to achieve their legislative objectives. This is not a case of "outright exclusion" where the impugned provisions prevent the appellants from contributing to their pensions.[188]

110. On the contrary, the appellants could and did make pension contributions commensurate with the hours for which they were engaged to work, consistent with the treatment of all part-time and full-time employees in the federal public service. The impugned provisions also did not prevent the appellants from remaining on LWOP if they felt that was more advantageous from a pension perspective, nor do they prevent the appellants from supplementing their retirement income through other financial vehicles.[189]

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[185] *Canada (A.G.) v JTI-MacDonald Corp.*, 2007 SCC 30 at para 40.
[186] Gowing Affidavit at para 39, AR vol V, at 750.
[187] *Alberta v Hutterian Brethren of Wilson* Colony, 2009 SCC 37 at paras 53-55.
[188] Contrast with *Quebec (Attorney General) v A*, 2013 SCC 5 at paras 360-62.
[189] Decision at para 179.

d) Effects Are Proportional

111. Finally, the Court must assess whether the overall benefits of the measure are worth the cost of the rights limitation at issue.[190] The alleged impact on the appellants' rights does not outweigh the salutary effects of the Plan and the impugned provisions. The "effect" of the provisions is that the appellants are unable to buy-back pension benefits in excess of their assigned hours of work. What the appellants describe as a "reduced" pension benefit, which in fact simply reflects the hours for which they were engaged to work, does not result from the Plan, but from the fact that they worked part-time at some point during their career. The appellants could also work an additional period of time to reach a desired level of retirement income. Their reasons for working part-time are entirely unconnected to the impugned provisions.

112. As discussed, the salutary effects of the impugned provisions outweigh any alleged deleterious effects. The provisions ensure fairness between full-time and part-time members by ensuring that pension contribution rights reflect a member's terms and conditions of employment. They also ensure consistent treatment of all part-time members, regardless of the reasons for which they work part-time.

113. Complex social benefits schemes reflect policy choices that necessarily draw lines. However, as this Court has noted, "[p]erfect correspondence between a benefit program and the actual needs and circumstances of the claimant group is not required."[191] The fact that the impugned provisions have some effect on the appellants, or do not meet their needs as much as they would like, does not outweigh the broader ameliorative purpose of the Plan and does not mean that the Plan is discriminatory.

F. REMEDY

114. The remedy sought by the appellants is vague and unworkable. They ask this Court to read in unspecified words to the legislation to allow them, and only them, a benefit – the right to make

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[190] *Hutterian Brethren* at paras 73, 77.
[191] *Withler* at para 67.

pension contributions over and above their assigned hours of work – not provided to any other federal public servant. Granting this remedy would place the Court in the position of making a significant policy choice that is best left to Parliament. The remedy sought would place the Plan out of step with all other federal public sector pension plans.

115. Specifically, the appellants ask that retired members who job-shared be given the opportunity to "buy-back pensionable service and make contributions to the RCMP Pension Fund on an equitable basis".[192] As noted, the appellants' part-time hours are *already* fully pensionable, meaning that there is no remaining time to be "bought back". Their proposed remedy would also run counter to the *RCMPSA*, which provides that such elective service is only open to individuals "while a member of the Force"; retired members are thus not eligible.[193] The appellants' position further underscores the complexity of the pension regime and the unworkability of the remedies sought. This Court has recently cautioned against giving retroactive effect to a statute in the absence of clear legislative intent.[194]

116. Alternatively, if this Court is of the view that discrimination has taken place, the most effective remedy would be to require a change to the job-sharing program such that the appellants would be deemed an employment status that would provide them with the pension benefits associated with full-time hours of work.

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[192] Notice of Appeal (Court of Appeal) para 4, AR vol I at 126.
[193] *RCMPSA*, s 8(1). Section 11.5 of the *Regulations* creates an exception to this rule. However, the exception is inapplicable to the present case.
[194] *Tran v Canada (PSEP)*, 2017 SCC 50 at paras 48-49.

PART IV – COSTS

117. The Respondent does not seek costs.

PART V – ORDER SOUGHT

118. The Respondent asks that the appeal be dismissed without an order of costs.

DATED AT OTTAWA, this 7th day of October, 2019.

Christopher Rupar **Zoe Oxaal** **Gregory Tzemenakis** **Youri Tessier-Stall**

Counsel for the Respondents

PART VI – LIST OF AUTHORITIES

Legislation		**Cited at para.**
An Act to amend the Royal Canadian Mounted Police Superannuation Act, to validate certain calculations and to amend other Acts, SC 2009, c 13, s 12	*Loi modifiant la Loi sur la pension de retraite de la Gendarmerie royale du Canada, validant certains calculs et modifiant d'autres lois*, LC 2009, c 13, art 12	20
Income Tax Act, RSC 1985, c 1 (5th Supp)	*Loi de l'impôt sur le revenu*, LRC 1985, ch 1 (5e suppl)	11
Income Tax Regulations, CRC, c 945, ss 8500(1), 8503(4)(a)(ii), 8504(4)(a), 8504(4)(b), 8504(4)(c)	*Règlement de l'impôt sur le revenue*, CRC, ch 945, arts 8500(1), 8503(4)(a)(ii), 8504(4)(a), 8504(4)(b), 8504(4)(c)	11, 25, 38
Public Service Superannuation Act, RSC 1985, c P-36, s 2	*Loi sur la pension de la function publique*, LRC 1985, ch P-36, art 2	10, 11
Public Service Superannuation Regulations, CRC, c 1358, ss 7(2)(a)(iii), 7(3)	*Règlement sur la pension de la function publique*, CRC, ch 1358, arts 7(2)(a)(iii), 7(3)	10, 33, 101
Royal Canadian Mounted Police Superannuation Act, RSC 1985, c R-11, ss 2, 5, 5(1), 6, 6(a)(ii)(A), 6(b), 6(b)(ii)(K), 6(b)(ii)(L), 6.1, 8(1), 26(c), 27(1)	*Loi sur la pension de retraite de la Gendarmerie royale du Canada*, LRC 1985, ch R-11, arts 2, 5, 5(1), 6, 6(a)(ii)(A), 6(b), 6(b)(ii)(K), 6(b)(ii)(L), 6.1, 8(1), 26(c), 27(1)	7, 11, 12, 14, 23, 32, 34, 35, 105, 114
Royal Canadian Mounted Police Superannuation Regulations, CRC, c 1393, ss 2.1, 5.2(1), 10, 10(1)(a), 10(1)(b), 10(2), 10(2)(b)(iii), 10(3), 10(4), 10.1, 11.5, 17.1-17.3	Règlement sur la pension de retraite de la Gendarmerie royale du Canada, CRC ch 1393, arts 2.1, 5.2(1), 10, 10(1)(a), 10(1)(b), 10(2), 10(2)(b)(iii), 10(3), 10(4), 10.1, 11.5, 17.1-17.3	7, 18, 25, 32, 33, 34, 35, 92, 101, 105, 114

Case Law		**Cited at para.**
1.	*Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37	108, 111
2.	*Baier v Alberta*, 2007 SCC 31	50
3.	*Canada (Attorney General) v. Johnstone*, 2014 FCA 110	81

26.	*Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17	58, 59, 60
27.	*R v Stillman*, 2019 SCC 40	48
28.	*Stewart v Freeland (2006)*, 276 DLR (4th) 585	81
29.	*Symes v Canada*, [1993] 4 SCR 695	68
30.	*Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50	114
31.	*Withler v Canada (Attorney General)*, 2011 SCC 12	5, 56, 57, 61, 64, 80, 84, 95, 98, 99, 112
32.	*Worthington v Canada*, 2008 FC 409	81
33.	*Wynberg v Ontario*, [2006] OJ No 2732 (QL)	81
Secondary Source		
34.	*Directive on Leave and Special Working Arrangements* (April 1, 2009), s 4	32
35.	*House of Commons Debates*, 34th Parl, 3rd Sess, Vol VI (24 February 1992) at 7487 (Hon Gilles Loiselle),.	102